

Draft Report on Copyright.

DRAFT REPORT ON COPYRIGHT.

The Committee to which was referred the subject of Copyright, with instructions to report to a general meeting of the persons interested in forming a Canadian Society of Authors, begs leave to report as follows :—

Your Committee has carefully considered the various steps taken by the Government of the old Provinces of Canada, as well as by the Dominion Government, with respect to the passage of a Copyright Act, which would meet the views of the Imperial Government, and at the same time be acceptable to authors and publishers in Canada. From the memorandum submitted by the departmental representatives of the Colonial Office, dated 20th May, 1892, it is evident that the Foreign Reprints Act was not satisfactory to the publishers of Great Britain. A perusal of the despatches which passed between Sir John Thompson and the Colonial Office, with regard to the Bill of 1889, also shews that a license for a republication of a British Copyright on the payment of a 10 per cent. royalty was regarded as inadequate and unsatisfactory. Hence the refusal of Her Majesty's assent to Sir John Thompson's Bill. It is not within the province of the Canadian Society of Authors to proffer any opinion on the constitutional questions involved in the conflicting claims of jurisdiction between the British and Dominion Parliaments on the subject of copyright legislation. But we may be permitted to urge that as the aim of both Legislatures alike is the good of Her Majesty's subjects and the enactment of just legislation to that end, it seems possible to attain this practical result without compromising the position of either Government upon the abstract question of jurisdiction. The substance of the legislation being agreed upon, its enactment by either Legislature, or in identical terms by both, will dispense with the ground for controversy on this subject.

If it is to be assumed that Lord Herschell's Bill for consolidating the Copyright Acts of Great Britain represents the policy of the Home Government with regard to Copyright, it becomes evident that such a solution of the Canadian Copyright problem must be looked for as will not antagonize the principle of that Bill. The question that confronts your Committee, therefore, is: Can the Imperial policy in this respect be maintained and at the same time Colonial authors and publishers be permitted to enjoy a reasonable preference in their own markets?

Your Committee is of the opinion that both are possible. Your Committee, therefore, does not recommend any amendment to Lord Herschell's Bill which would exclude any British Copyright from the Canadian market, except with the consent and approval of the author or the holder of the copyright. By virtue of the right of property which an author has in his works, he can sell his copyright to any publisher in any part of the Empire, and conversely any publisher should have the right of purchase and all the privileges which this right implies. But as the law now stands, the sale to a publisher in the United Kingdom carries with it the right of entry to the Canadian market, notwithstanding any contract entered into between the author and the Canadian publisher. Your committee considers this unjust to the Canadian author and publisher, and would therefore respectfully submit, that where an author enters into an arrangement with a Canadian publisher for the copyright and sale of his works in Canada, the Canadian copyright should carry with it the exclusive control of the Canadian market, except as to individual copies of the work which might be imported for the use of Public Free Libraries, Universities or other schools of learning. The

advantage to the author in this case would be by no means inconsiderable. Your committee is of the opinion that the Canadian publisher by his knowledge of the market and by his facilities for placing works before the public would be able to dispose of a much larger edition of such authors' works than would ever reach the people of Canada under the present British Copyright arrangements, and your Committee therefore, has no hesitation in saying that the amendments hereinafter suggested would greatly benefit both the author publishing in Great Britain, and the Canadian public.

Your committee would, however, fail in its duty to Canadian authors and publishers if it did not also emphasize the Canadian view of the case. Many Canadian authors prefer publishing their works in London rather than in Canada inasmuch as this gives them a large market at the outset. The consequence of this is that they are little known to the Canadian public, as the British publisher has little interest in what he regards as our comparatively limited market. If the recommendation of your Committee is adopted, the Canadian author who publishes in London, could also arrange with a Canadian publisher for a Canadian edition of his works, and in this way secure, in addition to the British market, the full advantage of the Canadian market. The benefit to the author under these circumstances, is so apparent as to render all further elucidation unnecessary.

A similar benefit would accrue to the Canadian publisher. To him the market of his own country is of the first importance. Limited as it is, compared with the market of Great Britain, it nevertheless affords a reasonable scope for enterprise, and as he cannot hope to win a foothold in any other, he might reasonably be expected to have a strong claim upon the ^{British} ~~only~~ market fairly open to him. It is also to be remembered, if he is successful, that he shares his prosperity, in every instance, with the author. Indeed, it is well known that many authors owe much of their success to the enterprise and judgment of their publishers.

It is the opinion of your Committee, therefore, that Lord Herschell's Bill would ~~conduce largely to the benefit of Canadian authors and publishers, and the public generally, if amended by adding a clause to the following effect which might appear as a subsection to section 35 of the Bill:—~~

(a) Provided, also, that notwithstanding anything in this Act, it shall be lawful for the Legislature in any British colony or possession to pass an Act or Ordinance providing that if and when there be registered at the office for the registry of copyrights in literary and artistic works kept under the authority of the Government of such British colony or possession a reprint of any literary or artistic work first published in any other part of Her Majesty's Dominions or simultaneously published in some other part of Her Majesty's Dominions, and in the said British colony or possession, with a certificate that the owner of the copyright under this Act in such work sanctions such reprint, then and thereafter no copy of the said work so copyrighted under this Act shall be imported into such British colony or possession save and except copies of such work specially imported for the *bona fide* use of Public Free Libraries and University and College Libraries and Law Libraries of any duly organized Law Association or Society for the use of its members, such copies so imported, however, not to exceed more than two for each of such Libraries.

2. That a copy of this report be transmitted to the Minister of Justice, with an urgent request that a despatch based thereon be sent to the Colonial Secretary.

3. That a deputation be appointed to confer with the Canadian Copyright Association with a view to their acting in concert with this Society to obtain the adoption of the above amendment.

4. That a Committee be appointed to represent the views of this Society before the Members of the Dominion Government if deemed desirable.

5. That your Committee be authorized to communicate with the British and the American Associations of Authors, to secure, if possible, their co-operation in advancing the recommendations of your Committee.

